



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/171562

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit (PACU) in regard to FoodShare benefits (FS), a telephonic hearing was held on February 23, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly issued a notice of state tax intercept to the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 20, 2014 the agency issued two notices of FS overpayment to petitioner's address of record. The total overpayment was for \$5888 (claim # [REDACTED] (\$916) and # [REDACTED])

(\$4972)). The reason for the overpayment was stated as “failure to report total household income exceeding program reporting limits due to client error.” See Exhibit 1.

3. The petitioner did not appeal the overpayment notices.
4. On June 3, 2014 the agency issued a repayment agreement to petitioner.
5. The petitioner had a total of \$530 recouped from her FS in 2015 to offset claim # [REDACTED]
6. Petitioner had an open FS case in June and September 2015. No recoupments were made from her FS in those months.
7. On June 2, 2015 the agency issued a repayment agreement for the FS overpayments to petitioner’s address of record.
8. On June 2, 2015 the agency issued a Dunning notice regarding the FS overpayments to petitioner’s address of record.
9. On September 2, 2015 the agency issued a Dunning notice regarding the FS overpayments to petitioner’s address of record.
10. On December 2, 2015 the agency issued a Dunning notice regarding the FS overpayments to petitioner’s address of record.
11. On December 2, 2015 the agency issued a repayment agreement for the FS overpayments to petitioner’s address of record.
12. Petitioner’s FS case closed in December 2015.
13. On January 15, 2016 the Public Assistance Collection Unit issued a notice of state tax intercept in the amount of \$5358 regarding the FS overpayments to the petitioner at her address of record.

DISCUSSION

Wis. Stat. §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Petitioner did not dispute the overpayments, but rather questioned how the overpayments got to the point of tax intercept when she believed she was repaying the debt through a recoupment of a portion of her FS benefits. For reasons unexplained at hearing, her FS case “looked like it was going to close” in June and September and December 2015. However, her case did not close in June or September and she was issued FS. When the case “looked to the agency’s computer system like it was going to close” for June or September, no recoupment was taken, and dunning notices were issued. However, the dunning notices do not advise petitioner that no payment/recoupment was made for those months. No notices of decision were presented at hearing to show that the petitioner was advised her case might close for those months or

that no recoupment of her FS was taken. The repayment agreement from June 2015 states that if petitioner “is currently receiving benefits, we will automatically collect the overissuance by reducing your benefits each month. You do not need to return this agreement if you are currently receiving benefits...You will receive a new repayment agreement when your case closes, and you will be expected to make monthly payment at that time.” Based on all of this, petitioner made no effort to respond to the repayment agreement or the dunning notices in June because she believed her FS were being recouped out of her open FS case. Further, no repayment agreement was presented at hearing to show that one was issued for September, which could have possibly alerted the petitioner that she was getting a new repayment agreement because her case closed that month, and was expected to make monthly payment at that time, per the language of the agreement cited above.

According to FS policy:

All Repayment Agreements are due on the 25th of the month. **In all cases, if the FS group is receiving FS benefits, recoupment will take place**.... If FS benefits are not being issued and the client does not sign and return the FS Repayment Agreement, dunning notices will be issued through CARES.

FoodShare Wisconsin Handbook, §7.3.1.8 (emphasis added), available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Policy further provides:

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the overpayment must be considered delinquent. Delinquency is defined as failing to make the monthly payment by the due date three times over the life of the debt. The collection system sends three dunning, or past due, notices for each of the three missed payments. The debt must meet all six of the criteria below:

	State	Federal
1	Valid and legally enforceable	Valid and legally enforceable
2	All error types	All error types
3	\$20	\$25
4	At least 30 days after the third notification of the tax intercept.	At least 120 days from notification of overissuance.
5	Free from any current appeals.	Free from any current appeals.
6	Incurred by someone who is not	Incurred by someone who is not

	currently in bankruptcy.	currently in bankruptcy.
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Id. at §7.3.2.10 (emphasis in original).

Based on the policy, “in all cases, if the FS group is receiving FS benefits, recoupment will take place,” petitioner’s recoupment should have taken place in June and September. It did not. The agency’s own computer system actually caused it to look like petitioner was delinquent. Because of this, I cannot find that the agency acted in accordance with its own policy, and cannot find that the agency sent out the June and September dunning notices correctly. Because the Petitioner did not properly receive *three* dunning notices, the agency did not properly issue a tax intercept notice to the Petitioner.

Accordingly, I will remand the matter to the agency to rescind the tax intercept notice and to cease any action to intercept Petitioner’s taxes related to the January 15, 2016 notice. This is not to say there isn’t an overpayment; there is. And now that petitioner does not have an open FS case, according to her testimony at hearing, she will likely need to arrange for a repayment agreement so that a reasonable payment schedule can be made. She should do this to avoid another possible tax intercept action. Petitioner may contact the PACU to discuss repayment options. According to its notice, the PACU can be reached at 1-800-943-9499.

Finally, I add the following information for petitioner as to her questions about the referral to the US Treasury that she received:

State tax intercept notices include a 30 day fair hearing right. The Division of Hearings and Appeals conducts the fair hearing. Federal intercept notices have a 60 day administrative review process. The Public Assistance Collections Unit conducts the administrative desk review. The client must provide evidence showing the claim is not past due, or is not legally enforceable. If the client can not provide that evidence, the case will be sent for intercept.

The case is not subject to the tax intercept while under review or appeal.

Id. at §7.3.2.11.

CONCLUSIONS OF LAW

The agency did not properly issue a tax intercept notice to the petitioner.

THEREFORE, it is

ORDERED

That the agency shall take all administrative steps necessary to rescind the tax intercept notice issued to the petitioner on January 15, 2016 and shall cease any action to intercept Petitioner’s taxes related to the January 15, 2016 notice. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

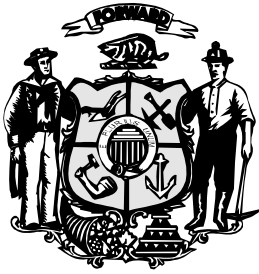
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of March, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 15, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit